

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

IDA M. DITTO)	
Claimant)	
VS.)	
)	
RESOURCE MAINTENANCE)	Docket No. 204,709
Respondent)	
AND)	
)	
UNION INSURANCE)	
AND)	
ROYAL INSURANCE COMPANY)	
Insurance Carriers)	

ORDER

Claimant appeals from a preliminary hearing Order of June 13, 1996, wherein Special Administrative Law Judge William F. Morrissey denied claimant benefits finding claimant had failed to prove that she suffered accidental injury arising out of and in the course of her employment.

ISSUES

- (1) Whether claimant met with personal injury by accident arising out of and in the course of her employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant alleges accidental injury arising out of and in the course of her employment in July 1993. During the summer or fall of 1993 claimant was employed with respondent in its flood and fire restoration business. In approximately July 1993 she was in the town of Blue Rapids working on a fire restoration job for respondent employer. That evening, while taking a shower, claimant noticed a small mark on her leg which she described as either a pimple or a ringworm, which was followed by a rash. She successfully treated her leg with Cortaid and the rash disappeared within a couple of days. Claimant again experienced symptomatology in March 1994 after she was bitten or stung by an insect. This encounter also led to a rash similar to that of the summer of 1993. Again, claimant treated the rash and it went away. In mid-summer of 1994 claimant began experiencing symptomatology, including pain, irritability, dizziness, and fatigue. After being admitted to the hospital on August 4, 1994, claimant was ultimately diagnosed with Lyme disease.

In describing the occurrence in 1993, claimant was unable to state that she was bitten by a tick or that she saw a tick on her person after the Blue Rapids job. The only way claimant was able to associate the Blue Rapids job with a tick bite was the fact that another employee had found two ticks on his person on the evening after being at the Blue Rapids job for about two hours. He did not remain at the Blue Rapids job for the entire day and could not say specifically when or how the two ticks got on him.

The medical evidence is also not supportive of claimant's allegations as her treating doctor, Dr. Larry Rumans, testified that he had no way of knowing when claimant was bitten by a tick. He went on to indicate that the symptoms of Lyme disease could appear months or even years after the original tick bite.

In proceedings under the Workers Compensation Act it is claimant's burden to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 44-501, as amended, and K.S.A. 44-508(g), as amended.

The evidence presented before the Appeals Board is not sufficient to convince the Appeals Board that claimant has carried her burden of proving that she suffered accidental injury arising out of and in the course of her employment with the respondent. There is no evidence in the file to indicate that claimant was bitten by a tick at the Blue Rapids job or at any other job while she was employed with the respondent.

The Appeals Board finds, therefore, that claimant has failed to prove by a preponderance of the credible evidence that she suffered accidental injury arising out of and in the course of her employment with the respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Special Administrative Law Judge William F. Morrissey dated June 13, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August, 1996.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
 Bret C. Owen, Topeka, KS
 James B. Biggs, Topeka, KS
 William F. Morrissey, Special Administrative Law Judge
 Philip S. Harness, Director